

## § 80.612

## 40 CFR Ch. I (7–1–08 Edition)

fuel, if the evidence or information is relevant to whether that level would have been in compliance with the standard if the regulatory sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than the compliance methods in this paragraph (a), business records, and commercial documents.

(b) *Compliance with other requirements.* Determination of compliance with the requirements and prohibitions of this subpart other than the standards described in paragraph (a) of this section and in §§ 80.510, 80.511, 80.520, and 80.521, and determination of liability for any violation of this subpart, may be based on information obtained from any source or location. Such information may include, but is not limited to, business records and commercial documents.

[69 FR 39204, June 29, 2004]

### § 80.612 Who is liable for violations of this subpart?

(a) *Persons liable for violations of prohibited acts—*(1) *Standard, dye, marker, additives, used motor oil, heating oil, fuel introduction, and other product requirement violations.* (i) Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer who owned, leased, operated, controlled or supervised a facility where a violation of any provision of § 80.610(a) through (e) occurred, or any other person who violates any provision of § 80.610(a) through (e), is deemed liable for the applicable violation, except that distributors who receive diesel fuel or distillate from the point where it is taxed, dyed or marked, and retailers and wholesale purchaser-consumers are not deemed liable for any violation of § 80.610(b).

(ii) Any person who causes another person to violate § 80.610(a) through (e) is liable for a violation of § 80.610(f).

(iii) Any refiner, importer, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer who produced, imported, sold, offered for sale, dispensed, supplied, offered to supply, stored, transported, or caused the transportation or storage of, diesel

fuel or distillate that violates § 80.610(a), is deemed in violation of § 80.610(f).

(iv) Any person who produced, imported, sold, offered for sale, dispensed, supplied, offered to supply, stored, transported, or caused the transportation or storage of a diesel fuel additive which is used in motor vehicle diesel fuel or NRLM diesel fuel that is found to violate § 80.610(a), is deemed in violation of § 80.610(f).

(2) *Cause violating diesel fuel or additive to be in the distribution system.* Any refiner, importer, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer or any other person who owned, leased, operated, controlled or supervised a facility from which distillate fuel or additive was released into the distribution system which does not comply with the applicable standards, marking or dye requirements of this Subpart I is deemed in violation of § 80.610(g).

(3) *Branded refiner/importer liability.* Any refiner or importer whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name appeared at a facility where a violation of § 80.610(a) or (b) occurred, is deemed in violation of § 80.610(a) or (b), as applicable.

(4) *Carrier causation.* In order for a distillate fuel or diesel fuel additive carrier to be liable under paragraph (a)(1)(ii), (a)(1)(iii), or (a)(1)(iv) of this section, as applicable, EPA must demonstrate, by reasonably specific showing by direct or circumstantial evidence, that the carrier caused the violation.

(5) *Parent corporation.* Any parent corporation is liable for any violations of this subpart that are committed by any subsidiary.

(6) *Joint venture.* Each partner to a joint venture is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or is committed by the joint venture operation.

(b) *Persons liable for failure to comply with other provisions of this subpart.* Any person who:

(1) Fails to comply with the requirements of a provision of this subpart not

addressed in paragraph (a) of this section is liable for a violation of that provision; or

(2) Causes another person to fail to comply with the requirements of a provision of this subpart not addressed in paragraph (a) of this section, is liable for causing a violation of that provision.

[66 FR 5136, Jan. 18, 2001, as amended at 69 FR 39204, June 29, 2004]

**§ 80.613 What defenses apply to persons deemed liable for a violation of a prohibited act under this subpart?**

(a) *Presumptive liability defenses.* (1) Any person deemed liable for a violation of a prohibition under § 80.612(a)(1)(i), (a)(1)(iii), (a)(2), or (a)(3), will not be deemed in violation if the person demonstrates all of the following, as applicable:

(i) The violation was not caused by the person or the person's employee or agent;

(ii) Product transfer documents account for fuel or additive found to be in violation and indicate that the violating product was in compliance with the applicable requirements when it was under the person's control;

(iii) The person conducted a quality assurance sampling and testing program, as described in paragraph (d) of this section, except for those persons subject to the provisions of paragraph (a)(1)(iv), (a)(1)(v), or (a)(1)(vi) of this section or § 80.614. A carrier may rely on the quality assurance program carried out by another party, including the party who owns the diesel fuel in question, provided that the quality assurance program is carried out properly. Retailers, wholesale purchaser-consumers, and ultimate consumers of diesel fuel are not required to conduct quality assurance programs;

(iv) For refiners and importers of diesel fuel subject to the 15 ppm sulfur standard under § 80.510(b) or (c), or § 80.520(a)(1), or the 500 ppm sulfur standard under § 80.510(a) or 80.520(c), test results that—

(A) Were conducted according to an appropriate test methodology approved or designated under §§ 80.580 through 80.586, 80.2(w), or 80.2(z), as appropriate; and

(B) Establish that, when it left the party's control, the fuel did not violate the sulfur, cetane or aromatics standard, or the dye or marking provisions of §§ 80.510 or 80.511, as applicable;

(v) For any truck loading terminal or any other person who delivers heating oil for delivery to the ultimate consumer and is subject to the requirement to mark heating oil or LM diesel fuel under § 80.510(d) through (f), data which demonstrates that when it left the truck loading terminal or other facility, the concentration of marker solvent yellow 124 was equal to or greater than six milligrams per liter. In lieu of testing for marker solvent yellow 124 concentration, evidence may be presented of an oversight program, including records of marker inventory, purchase and additization, and records of periodic inspection and calibration of additization equipment that ensures that marker is added to heating oil or LM diesel fuel, as applicable, under § 80.510(d) through (f) in the required concentration;

(vi) Except as provided in § 80.614, for any person who, at a downstream location, blends a diesel fuel additive subject to the requirements of § 80.521(b) into motor vehicle diesel fuel or NRLM diesel fuel subject to the 15 ppm sulfur standard under § 80.520(a) or § 80.510(b) or (c), except a person who blends additives into fuel tanker trucks at a truck loading rack subject to the provisions of paragraph (d)(2) of this section, test results which are conducted subsequent to the blending of the additive into the fuel, and which comply with the requirements of paragraphs (a)(1)(iv)(A) and (B) of this section; and

(vii) Any person deemed liable for a designation or volume balance provisions violation under § 80.610(b) and 80.612(a) will not be deemed in violation if the person demonstrates, through product transfer documents, records, reports and other evidence that the diesel fuel or distillate was properly designated and volume balance requirements were met.

(2) Any person deemed liable for a violation under § 80.612(a)(1)(iv), in regard to a diesel fuel additive subject to the requirements of § 80.521(a), will not be deemed in violation if the person demonstrates that—